

System losses do not constitute electricity that is distributed to an end user. 35 ILCS 620/2a.1.
(This is a PLR).

August 5, 2002

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of February 7, 2002 and subsequent discussions we had during a meeting held on April 24, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of TAXPAYER ('Taxpayer'), we respectfully request a Private Letter Ruling from the Illinois Department of Revenue (the 'Department') pursuant to 2 Ill. Adm. Code 1200.110. The Department is requested to rule that Taxpayer is not required to pay Invested Capital Tax, 35 ILCS 620/1 et seq., ('ICT') with respect to the distribution of electricity in the circumstances described below.

As explained in more detail below, Taxpayer requests that the Department issue a private letter ruling indicating the following:

1. No ICT is imposed on Taxpayer with respect to electricity lost to resistance and heat within the transmission and distribution system or electricity used by Taxpayer at substations and other system facilities within the transmission and distribution system; these circumstances are referred to herein as 'system loss.'
2. No ICT is imposed on Taxpayer with respect to electricity used by Taxpayer at its administrative offices, technical or engineering facilities, and other locations outside the transmission and distribution system; these circumstances are referred to herein as 'non-system use.'

Statement of Facts

Taxpayer is an Illinois corporation with its principal place of business at ADDRESS, Illinois. Taxpayer is a public utility within the meaning of Section 3-105 of the Public

Utilities Act, 220 ILCS 5/1-101, et seq., in that it is engaged in the transmission, distribution, sale, delivery, and furnishing of electricity in the State of Illinois.

Basics of Power Delivery. Generally, an electric distribution system is composed of generating facilities, transmission lines, substations and distribution lines. Electricity is produced at a generating station, generally at a voltage of about 20 kilovolts. Substations adjacent to the generating station prepare the power to be transmitted, increasing, or 'stepping up,' the voltage of the electricity to between 69 and 765 kilovolts, depending on the distance to be traveled and the amount of electricity to be delivered. The electricity is then delivered to the transmission provider and travels from the substation along transmission lines to substations located in the area where the power will be used. Once the electricity reaches the area where it will be used or consumed, the voltage of the electricity is decreased, or 'stepped down,' at a substation and carried by the delivering supplier along primary distribution lines. The voltage of the electricity is further decreased by distribution transformers to the voltage at which it can be used by consumers (between 120 and 2,400 volts). The electricity then travels along secondary distribution lines until it reaches a home or business. The network of transmission lines, substations, and distribution lines is referred to as the 'transmission and distribution system' or the 'T&D system.'

Taxpayer owns and manages the T&D system used to transport electricity from generating stations to homes and businesses in Illinois. Taxpayer purchases electricity in wholesale transactions from various generating companies and delivers it as described above to electricity consumers.

System Losses. A portion of the electricity that enters the T&D system from a generating station is lost in the transmission of power from the plant to the end user. This loss is referred to as 'line loss' or 'system loss.' Line loss is a function of resistance in the material used to conduct electricity. Temperature and the current at which electricity passes through the T&D system are variables which can increase or decrease the amount of line loss.

A portion of the electricity that enters the T&D system from a generating station is used by the T&D system in the delivery of power. This use is also referred to as 'system loss.' For example, many substations are equipped with buildings that shelter equipment used to increase or decrease the voltage of electricity passing through the substation. Such buildings are generally equipped with interior and exterior lights (and may be heated) in order to facilitate repair and inspection of the equipment. Electricity used at the substation for light, heat, and the operation of other system equipment is drawn directly from the T&D system and is not metered.

Use By Taxpayer. A portion of the electricity acquired for resale in a wholesale transaction by Taxpayer from generating stations is used by Taxpayer at its administrative offices, technical research facilities, and other locations outside the transmission and distribution system. For example, Taxpayer operates administrative offices located at ADDRESS. These offices use electricity delivered by the T&D system. Electricity used in Taxpayer's facilities outside of the T&D system is metered.

Applicable Law

Prior to January 1, 1998, the Public Utilities Revenue Act (the 'PUR Act') imposed ICT on the 'invested capital' of public utilities providing electricity in Illinois. In 1997, the ICT was amended by the Electric Service Customer Choice and Rate Relief Law of 1997, and as of January 1, 1998, is imposed based on the number of kilowatt-hours of electricity distributed by a taxpayer in Illinois. 35 ILCS 620/2a.l.

The legislative history of the restructuring legislation that revised the ICT indicates that the revised tax was intended to replace the revenue collected pursuant to the prior scheme, while 'maintaining a comparable allocation among electric utilities in this State for payment of taxes imposed' under the prior scheme. 35 ILCS 620/1 a. To ensure that the legislation would be revenue-neutral, a tax 'cap' equal to the amount of revenue collected under the prior scheme was enacted (see 35 ILCS 620/2a.l). When the amount of ICT collected exceeds the tax cap, the excess is refunded to the taxpayers that paid it. 35 ILCS 620/2a.l. Since the enactment of the revised ICT, collections have always exceeded the cap, triggering refunds.

For purposes of applying the ICT, the term 'taxpayer' is defined as 'an electric utility ... engaged in the business of distributing electricity in this State for use or consumption and not for resale.' 35 ILCS 620/1. Taxpayer is a 'taxpayer' for purposes of the ICT and, accordingly, is subject to the ICT.

The ICT is imposed at graduated rates ranging from 0.031 cents per kilowatt-hour to 0.142 cents per kilowatt-hour 'distributed by the taxpayer in this State.' 35 ILCS 620/2a.l. The term 'distributing electricity' is defined as 'delivering electricity to an end user over facilities owned, leased or controlled by the taxpayer.' 35 ILCS 620/1.

Rulings Requested

Taxpayer requests that the Department issue a private letter ruling indicating that (1) no tax is imposed with respect to electricity lost to 'system loss,' and (2) no ICT is imposed with to electricity used by Taxpayer as 'non-system use.'

As noted above, for purposes of the ICT, electricity is considered to be 'distributed,' and therefore taxable, when it is 'delivered' to an 'end user.' 35 ILCS 620/1. Where no 'delivery' of electricity takes place, there can be no 'distribution' pursuant to the ICT, and thus, Taxpayer should not be subject to tax. Thus, when heat and resistance occurring in the T&D system cause electricity to be lost before it can be delivered to any user, no electricity has been 'distributed' for purposes of the ICT.

In addition, electricity used at substations and other system facilities in the T&D system is never 'delivered' to an end user, and accordingly, is not 'distributed' for purposes of the ICT. Similarly, electricity used at Taxpayer's non-system facilities is never 'delivered' to an end user, thus, is not 'distributed' for purposes of the ICT.

The ICT does not define the term 'deliver.' However, when construing statutory language, it is necessary to 'ascertain and give effect to the true intent and meaning of the legislature.' *American Stores Company v. Department of Revenue*, 296 Ill. App. 3d 295, 298 (1st Dist. 1998) ('*American Stores*'). In doing so, '[t]he statutory language is the best indication of the drafters' intent and should be given its plain or ordinary and popularly understood meaning.' *Id.* at 298-99.

According to Webster's Third New International Dictionary, to 'deliver' something, one must 'yield possession or control of' the item or 'make delivery of' it. Webster's Third New International Dictionary, Merriam-Webster, 1986 ('Webster's'). Further, Webster's defines 'delivery' as 'the act of putting property into the legal possession of another...whether involving the actual transfer of the physical control of the object from one to the other or being constructively effected in various other ways.' *Id.* Thus, 'delivery' of electricity is popularly understood as giving possession of that electricity to another person or entity. Electricity used to light and heat substations in the T&D system is not 'delivered' to end users or retail customers, since Taxpayer never relinquishes its legal possession of that electricity. Accordingly, no electricity is 'delivered,' and thus, no electricity is 'distributed' under the ICT. Thus, no tax should be imposed with respect to this electricity under the ICT.

This conclusion is consistent with the legislative intent of the revisions to the ICT, which indicated that the legislature intended the revised ICT to collect the same amount of revenue collected under the prior tax scheme. Under the prior tax scheme, which was based on the invested capital of each electric utility, system loss and non-system use were not subject to tax. The tax cap enacted with the revised ICT, based on the revenue collected under the old scheme, does not anticipate the taxation of these transactions. In fact, even if these transactions were taxable, the tax collected would be refunded to ICT taxpayers, because revenues under the revised ICT have consistently exceeded the tax cap.

Therefore, Taxpayer requests that the Department issue a private letter ruling to Taxpayer indicating that (1) no ICT is imposed with respect to electricity lost to resistance and heat within the transmission and distribution system or electricity used by Taxpayer at substations and other system facilities within the transmission and distribution system, and (2) no ICT is imposed with respect to electricity used by Taxpayer as non-system use.

Procedural Statements

The Illinois Department of Revenue is currently conducting an audit of Taxpayer covering the period January 1997 through December 2000. The Department's audit covers both the Electricity Excise Tax and the Public Utilities Revenue Tax imposed on Taxpayer for periods prior to August 1, 1998. The issues presented by this ruling request are not being examined in an audit of Taxpayer or any of its subsidiaries, nor are the issues addressed by pending litigation involving Taxpayer, any of its subsidiaries, or any related taxpayers. Additionally, Taxpayer has not found any Illinois case law or regulations that are dispositive of the requested rulings.

To the best of Taxpayer's knowledge, the Department has not previously ruled on the same or similar issues for Taxpayer, or any of its subsidiaries or predecessors under the ICT. Additionally, to the best of the Taxpayer's knowledge, neither the Taxpayer nor any of its subsidiaries have previously submitted the same or similar issues to the Department for determination, withdrawing it before a letter ruling could be issued. Furthermore, the Taxpayer has not located any authorities contrary to the requested rulings.

Any further information required by the Department may be obtained by calling PERSON.

Attached is a power of attorney authorizing the undersigned counsel to act on behalf of Taxpayer in filing this request for a ruling. The undersigned counsel declares that he is not currently under suspension or disbarment from practice before the Department and is a member in good standing of the bar of the State of Illinois.

Request for Conference

Taxpayer respectfully requests a post-submission conference with a representative of the Department to allow Taxpayer the opportunity to answer any questions the Department may have, and to allow the Department to obtain any additional information it requires regarding the rulings requested by Taxpayer.

The Department agrees that no Electricity Distribution Tax is incurred upon electricity lost within the transmission and distribution system. System losses do not constitute electricity that is distributed to an end user. 35 ILCS 620/2a.1.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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